

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

December 31, 1992

Hand Delivered

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Democrats 2000

Dear Commissioners:

Democrats 2000 requests an Advisory Opinion from the Federal Election Commission (the "Commission") concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations to a proposed one-time transfer of funds from the committee's nonfederal account to its federal account.

Facts

Democrats 2000 is a political committee organized in 1988 to operate on the nonfederal and federal level. The Committee has only two full-time staff and an annual budget of approximately \$130,000. In 1991, to comply with the Commission's new allocation rules, Democrats 2000 implemented certain accounting and reporting procedures to ensure a proper allocation of expenses between its federal and nonfederal accounts. In light of the Committee's limited administrative staff and resources, instituting such procedures was extremely burdensome. Despite efforts to comply with the regulations, the Committee has discovered that the procedures established resulted in an incorrect allocation of funds between the federal and nonfederal accounts.

In order to ensure that nonfederal funds were expended for federal activities prior to revising its procedures, the Committee paid its fundraising and administrative expenses out of the federal account for a period from August, 1991 through May, 1992. A small number of transfers were made from the nonfederal to the federal account to cover the nonfederal share of such expenses. Recently, the Committee reviewed its records and recalculated these expenses. In making this

recalculation, the Committee found that the amounts for fundraising and administrative expenses paid by the federal account were far in excess of that required under the ratio.

The Committee requests permission to reallocate expenses from January 1, 1991 through May, 1992 to reflect the correct allocation ratio. Its review of all records for the period reflect a discrepancy of \$20,375.34. If the Committee had properly allocated its expenses, it would have had \$21,731.12 in its federal account as of May 31, 1992. Instead, it had a balance of \$1,355.78. Therefore, the Committee requests permission to make a one-time transfer of \$20,375.34 from its nonfederal to federal account.

The regulations provide a window, now 70 days, in which a political committee may reallocate expenses from a federal to a nonfederal account. 11 C.F.R. 106.6(g)(2)(ii)(B). The Committee, however, was not aware that reallocation was required within a set time until that period had expired.

There is precedent for such a one-time correction. The Commission has on four occasions allowed the retroactive reallocation of expenses subject to the Commission's allocation regulations. The Commission has recognized that "the allocation regulations represent significant revisions to past practice and require a brief period of adjustment, i.e., the current election cycle, by political committees acting in good faith." Advisory Opinion 1992-2, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6045 (1992). See also Advisory Opinion 1992-27, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6065 (1992); Advisory Opinion 1991-25, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6029 (1991); Advisory Opinion 1991-15, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 6019 (1991). The Committee requests permission to make a similar reallocation during this "period of adjustment."

Democrats 2000 has certainly made a "good faith" effort to comply with the allocation regulations. And, since May, 1992, the Committee has successfully established revised accounting procedures to carefully monitor and allocate expenses appropriately. The Committee's past errors resulted from its excessive payments out of the federal account in order to ensure that no nonfederal funds were ever used for federal activities. In an abundance of caution, the Committee

**Federal Election Commission
December 31, 1992
Page 3**

took this step while it attempted to establish procedures to achieve full compliance with the Commission's new regulations.

Accordingly, the Committee requests that the Commission allow it to retroactively reallocate its fundraising and administrative expenses in accordance with the revised calculations. Please contact me if you need any additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Holly Schadler", with a long horizontal flourish extending to the right.

**B. Holly Schadler
Counsel to Democrats 2000**

BHS:slh



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 8, 1993

B. Holly Schadler
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005-2011

Dear Ms. Schadler:

This refers to your letter dated December 31, 1992, on behalf of Democrats 2000 concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a transfer reflecting a retroactive reallocation of funds from the non-Federal to the Federal account.

You state that Democrats 2000 ("the Committee") is a political committee operating on both the Federal and non-Federal level with an "operating budget" of approximately \$130,000. In 1991, the Committee implemented certain accounting and reporting procedures to ensure a proper allocation of expenses between its Federal and non-Federal accounts in accordance with the new allocation regulations. From August 1991 through May 1992, the Committee paid its fundraising and administrative expenses out of the Federal account and a small number of transfers were made from the non-federal to the Federal account to cover the non-Federal share of the expenses.

You state that the Committee recently reviewed and recalculated these expenses and found that amounts for administrative and fundraising expenses paid by the Federal account exceeded the amount required under the ratio. The Committee requests permission to reallocate expenses from the beginning of 1991 through May 1992. You state that, with proper allocation, the Committee would have had \$21,731.12 in its Federal account at the end of May, instead of \$1,355.78. The Committee requests permission to make a one-time transfer of the difference, \$20,375.34, from the non-Federal to the Federal account.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a

complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

In view of the cited requirements, please provide clarification and information as to the points referred to in the questions set out below.

- (1) Explain what is meant by the "procedures" for ensuring a proper allocation of expenses, stating whether this refers to accounting methods used, the categorization of certain activities as Federal or non-Federal, and the categorization of certain activities as administrative or fundraising.
- (2) Describe in detail the procedures used for determining the allocation of Federal and non-Federal expenses through May 1992.
- (3) Describe in detail how the new procedures differ from the previously used procedures. Please use specific examples and dollar figures to illustrate.
- (4) State when the Committee discovered the errors in allocation and when the new procedures were implemented. Describe how the errors were discovered. Describe with specificity how the Committee arrived at the difference of \$20,375.34.

Upon receiving your responses to the above questions, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions concerning the advisory opinion process or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

OGC 8478
RECEIVED
F.E.C.
SECRETARIAT

93 MAR -3 PM 12:55

February 23, 1993

AOR 1993-03

93 FEB 25 PM 2:29

RECEIVED
FEDERAL ELECTION COMMISSION

Mr. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request - Democrats 2000

Dear Mr. Litchfield:

This letter constitutes a response to your letter requesting additional information regarding Democrats 2000's advisory opinion request.

1. The reference to "procedures" refers primarily to accounting methods used, but also includes some categorization of certain activities as administrative or fundraising or nonfederal or federal. Like many political committees, Democrats 2000 did not fully understand the requirements imposed by the new allocation regulations when they took effect in 1991. The Committee had difficulty finding professional assistance in setting up an accounting system for this type of breakdown. Further, the activities undertaken by the Committee do not neatly fit into the categories set out by the Commission in its regulations, making it even more difficult to develop an accurate system. For example, two of Democrats 2000's principal activities are issue forums featuring elected officials and distribution of a newsletter on Democrats 2000 issue programs and other events. These activities do not directly support either federal or nonfederal candidates; nor are they clearly fundraising or administrative expenses. As a consequence, implementation of its current procedures took considerable time to finalize.

2. The procedures used for determining the allocation of federal and non-federal expenses through 1992 were as follows:

- January 1991 through July 1991. The Committee used several methods of determining the allocation of federal and non-federal expenses, many of which were modifications of their previous system. Some expenses were determined to be non-federal because

[17928-0001/DA930490.073]

they had no direct federal impact. The Committee allocated some late June expenses as federal, for example, because some of its activities involved federal elected officials, although none of these activities related to the election of a particular candidate. The Committee took this approach because it did not yet fully understand the new allocation rules.

- August 1991 through May 1992. During this period, Democrats 2000 paid all of its expenses out of its federal account. Only nominal transfers were made from the non-federal to the federal account. The amount of these transfers was considerably below the amount of the non-federal share of allocable expenses. Therefore, almost all expenses were paid out of federal funds. Because of its difficulty in understanding how to apply the regulations to its activities, throughout this period, Democrats 2000 chose to err on the side of spending more from the federal account than was apparently required under the rules. At the end of this period, a law firm with expertise in non-connected committees filing requirements assisted the Committee in the development of new procedures that more effectively tracked and allocated expenses under the regulations.

3. The new procedures, fully instituted as of June 1992, differ from the previous procedures in a number of ways. For much of 1991 and 1992, Democrats 2000 paid its expenses out of its federal account with federal funds. There was, however, considerable confusion during the entire period about the correct method to use. Moreover, the Committee understood that it could spend out of the federal account and make corrections from the nonfederal account at a later date. The Committee was not aware of the time limit on such corrections. This confusion was heightened by the Committee's uncertainty about how to account for in-kind contributions. During this period, the Commission did not have a well-defined policy for reporting and accounting for in-kinds.

Under the current system, the Committee lists each check written from the federal account individually on an accounting sheet. After that it lists a total for each category (administrative and separate fundraising activities) in an

Mr. Bradley Litchfield
February 23, 1993
Page 3

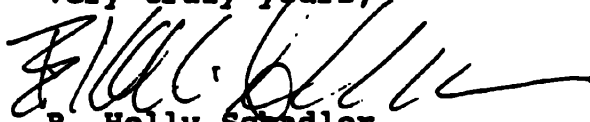
individual column followed by a federal column and a non-federal column for each category. For example, if the Committee has a federal check written for \$100 that it determines should be allocated 50% to administration and 50% to a fundraising project, the Committee put \$50 in the administration total column and \$50 in the fundraising project total column. Then it breaks down each of these amounts into the appropriate percentages for the category, and list those amounts in the federal, non-federal columns. Therefore, if the administration ratio is 20-80, the Committee then puts \$10 in the administration federal column and \$40 in the administration non-federal column.

Whenever Democrats 2000 makes a transfer from the non-federal account to the federal account, the totals from the non-federal columns are added to determine how much to transfer.

4. In the fall of 1992, the Committee attempted to determine how much it had overpaid from its federal account, and decided that the best way to do this was to recalculate all allocations from January 1991 through May 1992. This process took a long time to complete because of other demands during the campaign and the minimal staff available to complete this review. The process was completed in late 1992. The Committee then compared the resulting cash-on-hand figure from the corrected records (\$21,731.12) to the actual cash-on-hand figure from the former records (\$1,355.87). The difference was \$20,375.34.

Please contact me at (202) 434-1634 if you have any additional questions.

Very truly yours,



B. Holly Schadler

BHS:mah